

¹ The Court of Appeals' February 16, 2001 Memorandum Opinion is styled, "David O. Alegria, Appellant and Diane F. Barger, Appellee." Docket No. 84,651.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board must choose between the claimant, the respondent and the insurance carriers for the assessment of all or a portion of the cost of the reporter's fee and transcripts of the August 6, 1999 hearing before Judge Avery on the Motion to Determine Attorney's Fees filed by Ms. Barger. Respondent and its insurance carriers had no interest in this issue and did not appear at the hearing, nor did claimant. But the dispute was between claimant's present and former counsel over attorney's fees for representing claimant. Therefore, the Board finds that the costs of the motion hearing should be assessed against the claimant.

AWARD

WHEREFORE, it is the decision of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated August 12, 1999, and the Order of the Appeals Board dated December 28, 1999, should be, and are hereby, modified as follows:

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the claimant for the Hearing of August 6, 1999.

IT IS SO ORDERED.

Dated this ____ day of April 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

I respectfully disagree with the majority. The costs directly relate to administering the Workers Compensation Act and, therefore, it is more reasonable to burden the respondent and its insurance carrier with those costs rather than the injured worker.

BOARD MEMBER

c: David O. Alegria, Topeka, KS
John G. Atherton, Emporia, KS
John A. Bausch, Topeka, KS
Diane F. Barger, Wichita, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director